

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kimberly Eldridge	Team: Team # 3	CCRB Case #: 201104672	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/12/2011 7:59 PM	Location of Incident: § 87(2)(b) en route to the 41st Precinct stationhouse; the 41st Precinct Stationhouse	Precinct: 41	18 Mo. SOL 10/12/2012	EO SOL 10/12/2012	
Date/Time CV Reported Thu, 04/14/2011 3:19 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 04/14/2011 3:19 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. Officers			PBBX
2. POM Scott Berger	10210	948659	PBBX
3. POM Edwin Franco	00180	948985	PBBX
4. SGT Mervin Bennett	00255	920019	PBBX
5. POM Mohammed Donzo	07534	948907	PBBX

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Angelo Villella	00890	949773	PBBX

Officer(s)	Allegation	Investigator Recommendation
A.POM Edwin Franco	Abuse: Officer Edwin Franco stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POM Scott Berger	Abuse: Officer Scott Berger stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.	§ 87(2)(b)
C. Officers	Force: Officers used physical force against § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.	§ 87(2)(b)
D. Officers	Off. Language: Officers made remarks to § 87(2)(b) based upon sexual orientation while en route to the 41st Precinct stationhouse.	§ 87(2)(b)
E.POM Scott Berger	Force: Officer Scott Berger used physical force against § 87(2)(b) inside of the 41st Precinct stationhouse.	§ 87(2)(b)
F.POM Scott Berger	Discourtesy: Officer Scott Berger spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.	§ 87(2)(b)
G.SGT Mervin Bennett	Discourtesy: Sergeant Mervin Bennett spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.	§ 87(2)(b)
H.SGT Mervin Bennett	Off. Language: Sergeant Mervin Bennett made remarks to § 87(2)(b) based upon race inside of the 41st Precinct stationhouse.	§ 87(2)(b)
I.POM Scott Berger	Abuse: Officer Scott Berger threatened § 87(2)(b) with the use of force inside of the 41st Precinct stationhouse.	§ 87(2)(b)
J.SGT Mervin Bennett	Abuse: Sergeant Mervin Bennett authorized the strip search of § 87(2)(b) inside of the 41st Precinct stationhouse.	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]
§ 87(2)(g), § 87(4-b)	[REDACTED]	[REDACTED]

Case Summary

On April 14, 2011, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System. At 8:05 p.m. on April 12, 2011, officers assigned to Patrol Borough Bronx arrested § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx. The following allegations resulted from the officers' actions:

- **Allegation A) Abuse of Authority: Officer Edwin Franco stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.**
- **Allegation B) Abuse of Authority: Officer Scott Berger stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.**

§ 87(2)(g)

- **Allegation C) Force: Officers used physical force against § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.**

§ 87(2)(g)

- **Allegation D) Offensive Language: Officers made remarks to § 87(2)(b) based upon sexual orientation while en route to the 41st Precinct stationhouse.**

§ 87(2)(g)

- **Allegation E) Force: Officer Scott Berger used physical force against § 87(2)(b) inside of the 41st Precinct stationhouse.**
- **Allegation F) Discourtesy: Officer Scott Berger spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.**
- **Allegation G) Discourtesy: Sergeant Mervin Bennett spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.**
- **Allegation H) Offensive Language: Sergeant Mervin Bennett made remarks to § 87(2)(b) based upon race inside of the 41st Precinct stationhouse.**
- **Allegation I) Abuse of Authority: Officer Scott Berger threatened § 87(2)(b) with the use of force inside of the 41st Precinct stationhouse.**

§ 87(2)(g)

- **Allegation J) Abuse of Authority: Sergeant Mervin Bennett authorized the strip search of § 87(2)(b) inside of the 41st Precinct stationhouse.**

§ 87(2)(g)

- § 87(2)(g), § 87(4-b)

Results of Investigation

Civilian Statement

Complainant/Victim: § 87(2)(b)

- *At the time of this incident,* § 87(2)(b)

Arrest Photo

In § 87(2)(b)'s arrest photo, the area around his right eye is swollen (enc. C6). It also appears that he has scrapes on the right and possibly the left side of his face.

CCRB Statement

On May 23, 2011, § 87(2)(b) was interviewed at the § 87(2)(b) in the Bronx (enc. C3-C7). § 87(2)(b)'s statement is summarized below.

Shortly after 7:30 p.m. on April 12, 2011, § 87(2)(b) and his girlfriend left § 87(2)(b)'s apartment, § 87(2)(b) in the Bronx. § 87(2)(b) walked his girlfriend to the 2/5 Jackson Avenue train station, which is at the corner of the block where § 87(2)(b) lives. After § 87(2)(b)'s girlfriend entered the train station, § 87(2)(b) immediately caught the Bx4 bus and took it to Simpson Avenue and Westchester Avenue. § 87(2)(b) walked two blocks on Westchester Avenue to § 87(2)(b) which is a tenement building. § 87(2)(b) did not make any stops, did not speak with anyone, and did not have anything in his hands as he walked from the bus stop to the building. § 87(2)(b) was wearing a plain black hooded sweatshirt that had grey padding on the elbows, a black and grey fitted baseball cap, and blue jeans.

There was no one in front of or near § 87(2)(b) when § 87(2)(b) approached it. There are no lights—street, building, or otherwise—in front of the aforementioned location, so it was fairly dark in the area. § 87(2)(b) was at the aforementioned location to visit his friend, § 87(2)(b) who lives in § 87(2)(b). § 87(2)(b) did not know § 87(2)(b)'s last name. § 87(2)(b) passed through the gate to § 87(2)(b) without incident. The gate is always unlocked and anyone can pass through it. § 87(2)(b)'s friend threw a set of keys down to § 87(2)(b) via his apartment window. § 87(2)(b) used the keys to unlock the front door of the building and entered the lobby area without incident. There were no civilians or police officers in the lobby. § 87(2)(b) went up to § 87(2)(b)'s apartment. § 87(2)(b) did not stop at any additional apartments in the building. § 87(2)(b) was in the building for less than ten minutes before he exited the building alone. § 87(2)(b) did not have anything in his hands when he left the building.

Immediately after he exited the building, § 87(2)(b) saw three uniformed police officers running towards him. The officers did not say anything, but § 87(2)(b) suspected that the officers were running to him because he was the only person in the area at this time. § 87(2)(b) ran on Westchester Avenue and made a left turn onto Southern Boulevard. § 87(2)(b) ran because he had previous encounters with police officers in which force had been used against him and he did not want to get “beat up.” § 87(2)(b) stumbled and fell, but got back up and continued to run. § 87(2)(b) ran a total of three blocks before he stopped running. § 87(2)(b) stopped running because he ran out of breath. By this time, § 87(2)(b) was standing in front of a commercial shopping strip on Southern Boulevard. The area was very well lit due to the commercial lighting from the stores. Four to five police officers ran up to § 87(2)(b), grabbed him by his arms, and kicked his legs out from under him. § 87(2)(b) fell face forward onto the ground. Initially, § 87(2)(b) stated that the officers punched and kicked him, handcuffed him, and threw him face first inside a police van. Later in the interview, § 87(2)(b) stated that after he fell onto the ground, the officers handcuffed him, threw him against the side of a waiting police van, and then threw him face first into the van. § 87(2)(b) then stated that after the officers tackled him the first time, he stood back up because he did not want to be on the wet ground. § 87(2)(b) did not run again and did not intend on running again, but the officers pushed him against the side of a waiting police van, and

pushed him to the ground. The officers then handcuffed § 87(2)(b) without incident. PO1, identified via the investigation as Officer Edwin Franco of Patrol Borough Bronx, searched all of § 87(2)(b)'s pockets, but did not find anything during his search. Officer Franco, Officer Scott Berger, whom § 87(2)(b) identified by name, and at least three other unidentified officers whom § 87(2)(b) did not see, punched and kicked him in his back and side as he lay face down on the ground. § 87(2)(b) was not moving his body around when he was handcuffed or when the officers were using force against him.

Three officers, § 87(2)(b) did not know which ones, picked him up by his arms and tossed him into the van. There were no civilians or officers in the van when § 87(2)(b) was placed inside of it. § 87(2)(b) landed on his face on the floor of the van. § 87(2)(b) was not allowed to get up or sit on a seat. An unknown number of officers entered the van after § 87(2)(b) was placed inside. § 87(2)(b) however, never saw the officers and was unable to describe or otherwise identify them. § 87(2)(b) noted that the officers who transported him were calling him names, but was unable to specifically state which officer said what. § 87(2)(b) then stated that all of the officers who were in the van called him a “faggot” and made statements such as, “Fucking prick, we got him.” § 87(2)(b) remained lying face down on the floor of the van for the duration of his transport to the 41st Precinct stationhouse and could not see who or what was around him. § 87(2)(b) did not verbally respond to the officers at this time.

When § 87(2)(b) arrived at the 41st Precinct stationhouse, four police officers, § 87(2)(b) did not know which ones or where they came from, immediately pulled him out of the van and carried him into the stationhouse by his arms and legs. § 87(2)(b) was briefly brought before the front desk before he was taken to a room to the left of the front desk. § 87(2)(b) did not hear any of the officers speak to the desk sergeant about § 87(2)(b) or what transpired during § 87(2)(b)'s arrest. It appeared as if all civilians had to pass through this room before being taken to the holding cells, which were behind the room. Upon reaching this room, the four officers who were carrying § 87(2)(b) dropped him onto the floor. § 87(2)(b) landed on his face and was unable to get up because he was handcuffed.

An officer searched § 87(2)(b)'s pockets as he lay on the floor. There were four to six additional prisoners who passed through the room as § 87(2)(b) lay on the ground, but the room eventually cleared out and they were either moved to holding cells or released. Officer Berger and PO2, identified via the investigation as Sergeant Mervin Bennett of Patrol Borough Bronx, were in the room with § 87(2)(b). Officer Berger approached § 87(2)(b) and kicked him twice in the side. Officer Berger then placed his foot on the side of § 87(2)(b)'s neck, presumably to hold § 87(2)(b) down. Officer Berger was the only officer who used physical force against § 87(2)(b) at the precinct. § 87(2)(b) noted, however, that he was not moving around at the time and was lying still on his stomach. Officer Berger stated out loud, “We got him. That’s the same motherfucker from last week.” Sergeant Bennett then stated, “We got this motherfucker.” Sergeant Bennett called § 87(2)(b) a “prick” and stated, “Motherfucker, you made us chase you.” Sergeant Bennett also stated, “Niggas like you, that’s why you’re always in jail.” § 87(2)(b) responded by saying, “Fuck you! Your wife is probably at home being fucked by a young guy like me.” § 87(2)(b) then called Sergeant Bennett a “cocksucker” and a “pig.”

Officer Franco entered the room. Officer Franco and Officer Berger told § 87(2)(b) they were going to strip search him. § 87(2)(b) stated that they were not allowed to do so. Officer Berger responded, “We’re going to strip search you or we’re going to fuck you up.” The officers then told § 87(2)(b) to remove all of his clothing. § 87(2)(b) took off his hooded sweatshirt and his shoes. The officers told § 87(2)(b) that he had to remove all of his clothing. § 87(2)(b) removed his undershirt and his jeans. The officers again told § 87(2)(b) that he had to remove all of his clothing. § 87(2)(b) then removed his underwear and his socks. When § 87(2)(b) was

naked, the officers told § 87(2)(b) to squat one time. § 87(2)(b) complied. The officers then allowed § 87(2)(b) to get dressed before moving him to a holding cell.

§ 87(2)(b) was charged with resisting arrest and possession of a controlled substance. § 87(2)(b) had one small Ziploc bag of PCP in his pants pocket. § 87(2)(b) had the PCP with him when he left his house and did not purchase it en route to, or at, § 87(2)(b). § 87(2)(b) did not use the PCP and never removed it from his pocket. § 87(2)(b) suffered a black eye (right side) and had scrapes to his arms, elbows, hands, and the left and right sides of his face. § 87(2)(b) however, did not obtain medical treatment for his injuries.

NYPD Statements

Subject Officer: OFFICER EDWIN FRANCO (Patrol Borough Bronx)

- *Officer Edwin Franco is a § 87(2)(b)*
- *On April 12, 2011, Officer Franco worked from 5:30 p.m. to 2:05 a.m. the next morning. Officer Franco and his partner, Officer Scott Berger, were dressed in uniform and assigned to foot post 7, which covers Westchester Avenue between Southern Boulevard and Faile Street. Officer Franco and Officer Berger were on foot for the duration of their tour.*

Memo Book

Officer Franco had one memo book entry regarding this incident (enc. D1-D2). At 8:05 p.m., Officer Franco had an arrest.

Arrest Paperwork

Officer Franco completed a complaint report and an OLBS worksheet for § 87(2)(b)'s arrest (enc. D3-D4 and D6-D8). The narratives in both are consistent, and state that Officer Franco observed § 87(2)(b) "knowingly enter and exit a clean halls facility unlawfully." Officer Franco stated that § 87(2)(b) did not have permission of the owner or the tenant and was not an invited guest. § 87(2)(b) resisted arrest. Search incident to lawful arrest found three bags of PCP in § 87(2)(b)'s right pocket. § 87(2)(b) was charged with criminal possession of a controlled substance in the seventh degree, resisting arrest, and trespassing in the third degree.

Medical Treatment of Prisoner Report (MTPR)

Officer Franco completed a MTPR for § 87(2)(b) in which he noted that § 87(2)(b) resisted arrest and sustained minor scrapes to the right side of his face (enc. D9). Officer Franco also indicated that he observed injuries to § 87(2)(b)'s face (black left eye and scrapes) prior to § 87(2)(b)'s arrest. § 87(2)(b) refused medical attention at the precinct.

CCRB Statement

On August 24, 2011, Officer Edwin Franco was interviewed at the CCRB (enc. D10-D12). Officer Franco's statement is summarized below.

Officer Franco and Officer Berger were standing in front of a grocery store that is across the street from § 87(2)(b). It was dark outside, but there are street lamps immediately in front of § 87(2)(b) and there is also a light on the front of the building. § 87(2)(b) is a drug prone location, noted for sales of PCP, marijuana, and cocaine. It is also a residential "Clean Halls" building.

Shortly before 8 p.m., Officer Franco observed § 87(2)(b) approach the aforementioned building. § 87(2)(b) waited outside for a couple of minutes before apparently being buzzed in. There were no civilians near the entrance of the building or immediately inside of it, § 87(2)(b).

did not follow anyone into the building, and § 87(2)(b) did not have difficulty gaining access, so Officer Franco believed that he had to have been buzzed in. § 87(2)(b) immediately went up to the 5th floor. The building's hallways each have big windows and Officer Franco watched § 87(2)(b) knock on an apartment door. An unidentified individual answered the door and briefly spoke with § 87(2)(b) and the individual were close together, but Officer Franco was too far away to tell if they engaged in physical contact or exchanged any items. There was no additional interaction between § 87(2)(b) and the unidentified individual. § 87(2)(b) did not enter any apartments. Four to five minutes after entering the building, § 87(2)(b) took the stairs back down to ground level and exited. At that time, Officer Berger told Officer Franco that he arrested § 87(2)(b) the week before for buying drugs inside of that building, and suggested that they stop him.

When § 87(2)(b) exited the building, he grabbed the front of his waistband and looked around. Aside from the above, there was nothing else about § 87(2)(b) or his behavior that Officer Franco thought to be suspicious. Aside from Officer Berger stating that he arrested § 87(2)(b) the week before, there was no other reason to believe that § 87(2)(b) had been trespassing. Officer Franco and Officer Berger crossed the street to stop § 87(2)(b) and ascertain why he was in the building. Officer Franco stated to § 87(2)(b) "Sir. Sir. Excuse me. Can you hold on for a bit?" When § 87(2)(b) saw the officers, he ran on Westchester Avenue towards Southern Boulevard. Officer Franco and Officer Berger followed on foot. At no time did Officer Franco lose sight of § 87(2)(b). Officers Franco and Berger repeatedly told § 87(2)(b) to stop running, but he did not comply. There were no other officers involved in the foot pursuit. § 87(2)(b) ran in the middle of the street. § 87(2)(b) was wearing baggy pants and tripped over them, causing him to fall at the intersection of Southern Boulevard and Westchester Avenue. § 87(2)(b) fell forward and on his face.

A minute or two later, Officers Franco and Berger caught up to § 87(2)(b) who was still on the ground. When Officers Franco and Berger tried to handcuff § 87(2)(b) he resisted by flailing his arms and trying to push his hands under his body so that he could stand up. Officer Franco did not recall if § 87(2)(b) was able to get to his feet. § 87(2)(b) cursed, but Officer Franco did not recall what exactly he stated. Officer Franco and Officer Berger each grabbed one of § 87(2)(b)'s arms and pulled them behind his back so that he could no longer move them. Officer Franco and Officer Berger did not grab or hold any other part of § 87(2)(b)'s person. Officer Franco then handcuffed § 87(2)(b). There were no other officers involved in arresting § 87(2)(b). At no time did Officer Franco or Officer Berger punch, kick, or otherwise strike § 87(2)(b).

As Officer Franco and Officer Berger apprehended § 87(2)(b) a marked police van arrived at the location. Sergeant Bennett was inside of the van and an officer, whom Officer Franco identified as Officer "Boico" but whom the investigation identified as Officer Mohammed Donzo of Patrol Borough Bronx, was driving. No other officers responded to the location. It was difficult to stand § 87(2)(b) up because his pants were so baggy, but otherwise, Officers Franco and Berger did not have any difficulty getting § 87(2)(b) up from the ground. While walking § 87(2)(b) to the police van, Officer Franco noticed that § 87(2)(b)'s left eye was black and he had a scab on the left side of his face. Because of the appearance of the injuries, Officer Franco believed that § 87(2)(b) had them prior to this incident. Officer Franco did not observe any other injuries on § 87(2)(b)'s person.

At no time did Officer Franco or Officer Berger push § 87(2)(b) against the side of the van and at no time did § 87(2)(b)'s person make contact with the outside of the van. Officer Franco conducted a quick frisk of § 87(2)(b)'s person to ensure that he did not have any weapons prior to placing him in the van. Officer Franco and Officer Berger did not have any trouble getting § 87(2)(b) into the van. There were no additional civilians inside of the van. § 87(2)(b)

continued to curse, but was physically compliant. § 87(2)(b) sat in the last row of the van and remained sitting up on the seat for the duration of the ride to the 41st Precinct. At no time did Officer Franco observe § 87(2)(b) on the floor of the van. Officer Franco and Officer Berger sat in the second to last row, Sergeant Bennett sat in the front passenger seat, and Officer Donzo was the driver. There were no additional officers in the van. At no time during transport did Officer Franco or any other officer use profanity towards § 87(2)(b) or call § 87(2)(b) a “faggot.”

Once at the 41st Precinct, Officer Franco and Officer Berger helped § 87(2)(b) exit the van. They did not have any trouble doing so. Officer Franco and Officer Berger brought § 87(2)(b) to the front desk. Officer Franco searched § 87(2)(b) at the desk, at which time he recovered three bags of PCP in one of § 87(2)(b)'s pants pockets. Officer Franco did not recall the pocket in which he found the drugs. Officer Franco placed them on top of the front desk, but did not speak with the desk sergeant in regards to § 87(2)(b)'s arrest or the circumstances surrounding it. After obtaining § 87(2)(b)'s pedigree information, Officer Berger took him to a room to the side of the front desk to conduct a “thorough search” to ascertain whether § 87(2)(b) had any more drugs on him. Officer Berger was the only officer with § 87(2)(b) at this time. Officer Franco was not present for this search and from where he was processing § 87(2)(b)'s arrest, he could not see into the room. Officer Franco noted that in order to strip search a suspect, a supervisor has to provide permission and the officers have to believe that the suspect may have something on their person that they were unable to detect during a standard search. Officer Franco speculated that § 87(2)(b) may have been strip searched because he ran when he saw the officers and he could have been hiding a weapon. It also could have come from the fact that § 87(2)(b) was holding his pants when he exited the building.

The next time Officer Franco saw § 87(2)(b) was approximately thirty minutes later when he needed to fingerprint him. § 87(2)(b) did not complain of injury and refused medical attention. Officer Franco did not observe any officer use physical force against § 87(2)(b) at the precinct. At no time did Officer Franco, Officer Berger, or any other officer use profanity towards § 87(2)(b) at the precinct. Officer Franco did not hear Officer Berger threaten § 87(2)(b) with the additional use of force.

Subject Officer: OFFICER SCOTT BERGER (Patrol Borough Bronx)

- *Officer Scott Berger is a white male. At the time of this incident, § 87(2)(b)*
- *On April 12, 2011, Officer Berger worked from 5:30 p.m. to 2:05 a.m. the next morning. Officer Berger and his partner, Officer Edwin Franco, were dressed in uniform and were assigned to foot post 7, which covers Westchester Avenue from Southern Boulevard to Faile Street.*

Memo Book

Officer Berger did not have any entries in his memo book regarding this incident (enc. D13-D15).

CCRB Statement

On October 11, 2011, Officer Scott Berger was interviewed at the CCRB (enc. D16-D18). Officer Berger's statement was generally consistent with that of Officer Franco and is summarized below. The inconsistencies are noted.

Officer Berger and Officer Franco were standing across from § 87(2)(b) and had been positioned there for some time. At no time prior to this incident were Officer Berger and Officer Franco in a police vehicle. Officer Berger observed § 87(2)(b) exit § 87(2)(b)

§ 87(2)(b) but did not see him enter. Officer Berger recognized § 87(2)(b) because he had arrested him at the location the week before for trespassing and knew that § 87(2)(b) did not belong inside of the building. § 87(2)(b) was alone. Officer Berger did not recall if there were other civilians in the area at the time, but he did not see § 87(2)(b) interact with any civilians. Officer Berger did not recall what § 87(2)(b) was wearing, nor did he recall how § 87(2)(b)'s clothes fit him. Officer Berger saw § 87(2)(b) use one hand to grab his waistband near the front of his body and pull his pants up one time. Because of this action, Officer Berger thought that § 87(2)(b) could have been hiding something on his person. There was nothing else suspicious about § 87(2)(b) his clothing, or any actions that he made.

Officer Berger and Officer Franco decided to stop § 87(2)(b) to ascertain why he was in the building. When § 87(2)(b) saw the officers, however, he fled on Westchester Avenue. Officer Berger and Officer Franco followed on foot and repeatedly ordered § 87(2)(b) to stop. There were no other officers involved in the foot pursuit. After running for approximately two blocks, § 87(2)(b) slipped and fell on what looked like a manhole cover, landing on the right side of his body. Officer Berger and Officer Franco were a few feet behind § 87(2)(b) when he fell. Officer Berger and Officer Franco immediately handcuffed § 87(2)(b) as he lay on the ground. There were no other officers involved in § 87(2)(b)'s arrest. At no time did Officer Berger, Officer Franco, or any other officer punch, kick, or otherwise strike § 87(2)(b). Officer Berger and Officer Franco picked § 87(2)(b) up by his arms and did not have any trouble doing so. Either Officer Berger or Officer Franco frisked § 87(2)(b) prior to placing him inside of Sergeant Bennett's police van. Nothing was recovered during the frisk.

Officer Berger and Officer Franco did not have any trouble getting § 87(2)(b) inside of the van. Once inside of the van, however, § 87(2)(b) refused to sit on one of the seats. Instead, § 87(2)(b) lay on the floor of the van near the back and against the wall on the passenger side. § 87(2)(b) was laying on his side and facing the officers, who repeatedly told him to sit in one of the seats. Officer Berger, Officer Franco, Sergeant Bennett, and a fourth officer whom Officer Berger could not identify were inside of the van at the time. There were no additional civilians inside of the van. Officer Berger did not recall if § 87(2)(b) said anything during transport to the stationhouse. Neither Officer Berger nor any other officer in the van used profanity towards § 87(2)(b) or called him a "faggot" during transport. Other than laying on the floor of the van, § 87(2)(b)'s demeanor during transport was calm and he was compliant.

Upon arriving at the stationhouse, Officer Berger and Officer Franco lifted § 87(2)(b) up and out of the van. Officer Berger and Officer § 87(2)(b) did not have any trouble getting § 87(2)(b) out of the van or into the precinct. § 87(2)(b) walked of his own accord. Once at the front desk, Officer Franco took § 87(2)(b)'s pedigree information and documented that § 87(2)(b) had what appeared to be preexisting injuries to his face. Officer Franco searched § 87(2)(b) at the front desk, at which time a bag of Angel Dust and a bag of fake marijuana were recovered. Officer Berger did not recall from where the narcotics were recovered.

Officer Berger did not know what happened to § 87(2)(b) after he was at the front desk. Officer Berger briefly stepped away to use the restroom, and when he returned, he did not know where § 87(2)(b) had been taken. § 87(2)(b) was strip searched, but Officer Berger was not present for the strip search and did not know who conducted it. Officer Berger did know, however, that Sergeant Bennett authorized a strip search. Strip searches are usually conducted to ascertain whether someone has additional drugs on their person. § 87(2)(b) was arrested a week before this incident for trespassing and the person that he was with had drugs on him. Additionally, the initial location, § 87(2)(b) is a drug prone location. Officer Berger knew that § 87(2)(b) did not live in the building and "knew" that he was going to buy drugs. Aside from the aforementioned factors, there was nothing else that led Officer Berger to believe that § 87(2)(b) may have had more drugs on his person.

At no time did Officer Berger use force against § 87(2)(b) at the stationhouse. Officer Berger did not use profanity towards § 87(2)(b) or threaten § 87(2)(b) with the use of force while at the stationhouse. § 87(2)(b) had a black eye and bruises to his face, but he did not complain of injury and did not appear to have any additional injuries. Officer Berger believed that the injuries to § 87(2)(b)'s face were preexisting. Officer Berger asserted that nothing that he or any other officer did during § 87(2)(b)'s arrest caused § 87(2)(b)'s injuries.

Subject Officer: SERGEANT MERVIN BENNETT (Patrol Borough Bronx)

- *Sergeant Mervin Bennett is a black male. At the time of this incident, § 87(2)(b) [REDACTED].*
- *On April 12, 2011, Sergeant Bennett worked from 5:30 p.m. to 2:30 a.m. the next morning. Sergeant Bennett was dressed in uniform and was the Impact Supervisor. Sergeant Bennett was assigned to marked NYPD van 5777.*

Memo Book

Sergeant Bennett did not have any entries in his memo book regarding this incident (enc. D19-D20).

CCRB Statement

On November 3, 2011, Sergeant Mervin Bennett was interviewed at the CCRB (enc. D21-D23). Sergeant Bennett's statement was fairly consistent with that of Officer Franco and Officer Berger and is summarized below. Inconsistencies are noted.

Sergeant Bennett, Officer Franco, Officer Berger, and Sergeant Bennett's driver, whose identity Sergeant Bennett did not recall, were sitting in a marked police van that was parked across the street from § 87(2)(b). Officer Berger observed § 87(2)(b) exit § 87(2)(b). Officer Berger recognized § 87(2)(b) and stated to Sergeant Bennett and the other officers that he arrested § 87(2)(b) the week before and knew that § 87(2)(b) did not belong in the building. § 87(2)(b) was alone and was wearing all black, but Sergeant Bennett did not recall how § 87(2)(b)'s clothes fit him. Sergeant Bennett did not see when or how § 87(2)(b) accessed the building, and did not remember seeing § 87(2)(b) enter the building.

Sergeant Bennett told Officer Berger and Officer Franco to exit the van and stop § 87(2)(b) who was not free to go until the officers determined his reason for being in the building. Sergeant Bennett's account of the resulting foot pursuit was consistent with that of Officer Berger and Officer Franco. Sergeant Bennett, however, stated that additional officers were involved in the foot pursuit, but he did not recall their identities.

§ 87(2)(b) slipped and fell at the intersection of Westchester Avenue and Southern Boulevard. As § 87(2)(b) fell, he put his hands up, which caused him to land face first. Once on the ground, § 87(2)(b) attempted to get up, presumably to continue running, but the officers caught up to him, pushed him down to the ground, and held him down. § 87(2)(b) flailed his arms. Sergeant Bennett exited his van, approached § 87(2)(b) and held § 87(2)(b)'s back and shoulder's down. Sergeant Bennett and other officers repeatedly told § 87(2)(b) to stop resisting and to place his hands behind his back. Sergeant Bennett did not recall the identities of the officers involved in § 87(2)(b)'s apprehension. The officers grabbed § 87(2)(b)'s arms and pulled them behind his back. Sergeant Bennett did not recall which officer handcuffed § 87(2)(b). Sergeant Bennett did not recall any additional force being used to apprehend § 87(2)(b). At no time was § 87(2)(b) pushed or placed against the side of the police van. At no time did Sergeant Bennett or any other officer punch, kick, or otherwise strike § 87(2)(b).

After § 87(2)(b) was handcuffed, the officers tried to get him inside of the police van, but § 87(2)(b) resisted the officers' efforts and stumbled on the way into the van. § 87(2)(b) also wiggled his torso and kicked his legs out. An officer quickly frisked § 87(2)(b) prior to placing him inside of the van, but a further frisk and/or search was not a viable option because § 87(2)(b) was actively resisting. § 87(2)(b) refused to step into the van, so officers had to pull him inside. § 87(2)(b) lay on the seat in the second or third row of the van and refused to sit up. The officers had to push him into a sitting position. Sergeant Bennett was unsure whether § 87(2)(b) remained sitting up for the duration of the trip to the stationhouse, but noted that § 87(2)(b) continued to move around and "act hinky." § 87(2)(b) was squirming around and it seemed as if § 87(2)(b) was trying to adjust something at the back of his pants. Sergeant Bennett knew that § 87(2)(b) had been arrested the week before for drugs and suspected that he may have had some on his person. Sergeant Bennett speculated that § 87(2)(b) could have been trying to plant or discard drugs inside of the van or reposition it inside of his clothing. Sergeant Bennett repeatedly told § 87(2)(b) to stop moving, but he did not comply. Because of § 87(2)(b)'s behavior, Sergeant Bennett decided to take § 87(2)(b) straight back to the stationhouse. There were no other civilians in the van at this time. Sergeant Bennett did not recall which other officers were in the van during transport. At no time during transport did Sergeant Bennett or any officers who were present use profanity towards § 87(2)(b). At no time did Sergeant Bennett or any other officer call or refer to § 87(2)(b) as a "faggot."

When they arrived at the stationhouse, § 87(2)(b) refused to exit the van and had to be pulled out by his legs. Sergeant Bennett did not recall if § 87(2)(b) walked into the stationhouse of his own accord and was unsure how § 87(2)(b) was brought in. § 87(2)(b) was immediately taken to the front desk so that an arrest stamp could be generated. An unidentified officer searched § 87(2)(b) at the front desk, but Sergeant Bennett was unsure whether anything was found on § 87(2)(b) at this time. Sergeant Bennett authorized a strip search of § 87(2)(b) because of his behavior in the van and his arrest history. Sergeant Bennett believed that Officer Berger was present for the strip search, but did not know which, if any, other officers participated. The strip search occurred in the holding cell area and there were no other civilians around at the time. Sergeant Bennett missed the beginning of the strip search, but during the part that he observed, § 87(2)(b) was compliant with all directives that were issued to him. § 87(2)(b) did not protest the strip search. At no time did Sergeant Bennett observe Officer Berger or any other officer use physical force against § 87(2)(b) at the precinct. At no time did Sergeant Bennett, Officer Berger, or any other officer use profanity or offensive language towards § 87(2)(b) at the precinct. At no time did Officer Berger or any other officer threaten § 87(2)(b) with the use of force.

During the strip search, Sergeant Bennett saw an injury to § 87(2)(b)'s eye and asked him how he obtained it. § 87(2)(b) responded, "You didn't give it to me motherfucker, so don't worry about it." § 87(2)(b) did not appear to have any other injury and did not complain of injury. Sergeant Bennett did not independently recall if anything was recovered during the strip search, but upon reviewing the command log, he noted that there was a positive recovery of PCP. Sergeant Bennett, however, did not recall the amount of PCP that was recovered or from where it was recovered. After the strip search, § 87(2)(b) was placed in a holding cell and his arrest was processed.

Subject Officer: OFFICER MOHAMMED DONZO (Patrol Borough Bronx)

- *Officer Mohammed Donzo is a black male. At the time of this incident, § 87(2)(b)*

§ 87(2)(b)

- *On April 12, 2011, Officer Donzo worked from 5:30 p.m. to 2:05 a.m. the next morning. Officer Donzo was dressed in uniform and was Sergeant Bennett's operator. Officer Donzo was assigned to marked NYPD van 5777.*

Memo Book

Officer Donzo did not have any entries in his memo book regarding this incident (enc. D24-D26).

CCRB Statement

On May 22, 2012, Officer Donzo was interviewed at the CCRB (enc. D27-D28). Officer Donzo had no recollection of this incident. The investigator showed Officer Donzo a photo of § 87(2)(b) and provided a brief synopsis of the incident, neither of which helped to jog Officer Donzo's memory. Officer Donzo was Sergeant Bennett's operator for the duration of his tour, but did not recall being involved in § 87(2)(b)'s arrest or any other arrests. Officer Donzo did not recall transporting any prisoners to the 41st Precinct. Officer Donzo did not recall working with Officer Berger or Officer Franco during his tour. At no time did Officer Donzo use profanity towards any prisoners he may have transported and he did not hear any other officer do so. Officer Donzo did not call or refer to anyone as a "faggot" and he did not hear any other officer do so. Lastly, neither Officer Donzo nor any officer he witnessed punched, kicked, or otherwise struck any civilian during an arrest.

Witness Officer: OFFICER ANGELO VILLELLA (Patrol Borough Bronx)

- *Officer Villella is a white male. At the time of this incident, § 87(2)(b)*
- *On April 12, 2011, Officer Villella worked from 5:30 p.m. to 2:05 a.m. the next morning. Officer Villella was dressed in uniform and was assigned to foot post 1, which covers Westchester Avenue from Rogers Avenue to Kelley Street. Officer Villella was working alone.*

Memo Book

Officer Villella did not have any entries in his memo book regarding this incident, but he did have an entry at 8:00 p.m. in which he indicated that he was at meal (enc. D29-D31).

CCRB Statement

On December 22, 2011, Officer Villella was interviewed at the CCRB (enc. D32-D33). Officer Villella had no recollection of this incident. At the time of the arrest, Officer Villella was at meal. At no time during meal did Officer Villella respond to a call for assistance or any other jobs. Officer Villella was not involved in any arrests and did not witness any arrests. Officer Villella viewed § 87(2)(b)'s arrest photo, but did not recognize him. At no time during his tour did Officer Villella work with Sergeant Bennett, Officer Franco, or Officer Berger. At no time during his tour was Officer Villella assigned to, or working from, a police vehicle. At no time during his tour was Officer Villella a sergeant's operator.

NYPD Documents

Command Log

As per the 40th Precinct's Command Log from April 12, 2011, § 87(2)(b)'s strip search was authorized (enc. E2-E11). § 87(2)(b) had three bags of PCP on his person.

Roll Call

As per the 40th Precinct's Tour 3 Roll Call from April 12, 2011, Officer Angelo Villella was the Impact Sergeant's operator (enc. E13-E22).

§ 87(2)(b)

Status of Civil Proceedings

- As of June 29, 2012, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident.

§ 87(2)(b)

-
- | Category | Percentage |
|-----------------|------------|
| 1. [Redacted] | 100% |
| 2. [Redacted] | 45% |
| 3. [Redacted] | 100% |
| 4. [Redacted] | 100% |
| 5. [Redacted] | 45% |
| 6. [Redacted] | 95% |
| 7. [Redacted] | 85% |
| 8. [Redacted] | 100% |
| 9. [Redacted] | 95% |
| 10. [Redacted] | 65% |
| 11. [Redacted] | 100% |
| 12. [Redacted] | 60% |
| 13. [Redacted] | 100% |
| 14. [Redacted] | 95% |
| 15. [Redacted] | 100% |
| 16. [Redacted] | 100% |
| 17. [Redacted] | 100% |
| 18. [Redacted] | 100% |
| 19. [Redacted] | 100% |
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| 100. [Redacted] | 100% |

§ 87(2)(b)

- _____

Subject Officer CCRB History

- The CCRB has not substantiated any allegations against Officer Franco, Officer Berger, or Officer Donzo in their one year of service to the NYPD (enc. B1, B2, and B5).
- The CCRB has not substantiated any allegations against Sergeant Bennett in his fourteen years of service to the NYPD (enc. B3-B4).

Conclusion

Identification of Subject Officers

- Officer Franco, Officer Berger, and Sergeant Bennett acknowledged interacting with § 87(2)(b)

Investigative Findings and Recommendations

- **Allegation A) Abuse of Authority: Officer Edwin Franco stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.**
- **Allegation B) Abuse of Authority: Officer Scott Berger stopped § 87(2)(b) in the vicinity of § 87(2)(b) in the Bronx.**

It is undisputed that Officer Franco and Officer Berger stopped § 87(2)(b) after they observed him exit § 87(2)(b). Officer Franco and Officer Berger decided to approach § 87(2)(b) and request information from him because Officer Berger arrested § 87(2)(b) the week before and knew that he did not live in the building. Officer Berger also added that he “knew” that § 87(2)(b) was going to buy drugs. Lastly, both Officer Franco and Officer Berger stated that they observed § 87(2)(b) grab his waistband and pull his pants up.

In order to stop and seize a civilian, an officer must have “reasonable suspicion that a person is committing, has committed, or is about to commit a felony or Penal Law misdemeanor,” People v. DeBour, 40 N.Y.2d 210 (1976), (enc. A1-A13). The mere presence of a known drug offender in a high drug-prone area does not amount to an indication of criminal activity and in the absence of any reasonably founded suspicion that criminal activity is underway, a stop is not permissible, People v. Jiminez, 589 N.Y.S.2d 478 (1992 – 1st Dept.), (enc. A14-A15). Additionally, “a suspect’s flight alone or even his flight in conjunction with equivocal circumstances that might justify a police request for information is insufficient to justify pursuit,” People v. Carmichael, 2012 N.Y. App. Div. LEXIS 1038 (2012), (enc. A 16-A17).

Officer Berger arrested § 87(2)(b) a week before this incident, at which time § 87(2)(b) was charged with criminal trespassing (enc. F3-F5). § 87(2)(b) stated that on the date of this incident, he was at the incident location to visit his friend, who assisted him in getting into the building. Officer Franco stated that he observed § 87(2)(b) approach the building, get buzzed in, take the stairs to the fifth floor, knock on an apartment door, and speak with the person who answered the door. After speaking with the person, § 87(2)(b) took the stairs down and left the building. Officer Franco and Officer Berger suspected § 87(2)(b) of trespassing, but Officer Franco’s own observation indicates that in this instance, § 87(2)(b) was an invited guest and had a reason for being in the building. Therefore, § 87(2)(b) was not trespassing.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

- **Allegation C) Force: Officers used physical force against § 87(2)(b) in the vicinity of Southern Boulevard and Westchester Avenue in the Bronx.**

§ 87(2)(b) alleged that a group of officers took him to the ground, punched and kicked him, and threw him against the side of a police van.

Patrol Guide Procedure 203-11 regarding the use of force states that officers are to use the minimum amount of force necessary to arrest an individual (enc. A18-A19).

Sergeant Bennett, Officer Berger, and Officer Franco denied punching, kicking, or otherwise striking § 87(2)(b). Additionally, they all denied that § 87(2)(b) ever made contact with the side of a police van. All three officers indicated that § 87(2)(b) fell to the ground on his own, and no action was taken by any officer to get him to the ground. Moreover, they stated that the only force that was used to arrest § 87(2)(b) was pulling his arms behind his back. § 87(2)(b) on the other hand, provided three different accounts of what occurred during his arrest, none of which are the same. § 87(2)(b) only alleged that officers took him to the ground in two of his accounts. Similarly, he only alleged that officers punched and kicked him in two of his accounts, and he only alleged that he was thrown against the side of the police van in two of his accounts. Moreover, § 87(2)(b) alternated between alleging that force was used against him before he was handcuffed and that force was used after he was handcuffed.

§ 87(2)(b) alleged that he had scrapes to his arms, elbows, hands, and face. § 87(2)(b) also alleged that he suffered a black eye. § 87(2)(b) however, did not obtain medical treatment for his injuries, and refused medical treatment when it was offered to him at the stationhouse. The alleged scrapes to § 87(2)(b)'s extremities and face are consistent with § 87(2)(b)'s fall to the ground and the force that the officers indicated they used to apprehend him. The officers acknowledged § 87(2)(b)'s black eye, and noted that based on its appearance, it was an old injury that he had prior to this incident. § 87(2)(b) did not allege any additional injuries that would suggest that he was the victim of repeated blunt force trauma.

§ 87(2)(g)

- **Allegation D) Offensive Language: Officers made remarks to § 87(2)(b) based upon sexual orientation while en route to the 41st Precinct stationhouse.**

§ 87(2)(b) alleged that during transport, one or more officers used profanity towards him and called him a “faggot.” § 87(2)(b) however, also noted that he was lying face down inside of the van and he did not and could not see which officers were in the van, let alone identify which of them used profanity and/or offensive language towards him. § 87(2)(b) did not know the number of officers present during his transport to the stationhouse and could not describe any of them. § 87(2)(b) and the officers agreed that there were no additional civilians in the van, so there were no witnesses who could attest to this allegation or identify any potential subject officers.

Officer Franco and Officer Berger both stated that in addition to themselves, Sergeant Bennett was in the van at the time. Officer Berger did not recall the identity of the fourth officer

in the van, but Officer Franco identified that officer as Officer Donzo. Officer Berger, Officer Franco, Sergeant Bennett, and Officer Donzo all denied calling § 87(2)(b) a “faggot” or using profanity towards him during transport. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

- **Allegation E) Force: Officer Scott Berger used physical force against § 87(2)(b) inside of the 41st Precinct stationhouse.**

§ 87(2)(b) alleged that Officer Berger kicked him twice in the side as he lay handcuffed on the ground inside of the 41st Precinct stationhouse, an allegation that Officer Berger denied. § 87(2)(b) stated that Sergeant Bennett witnessed this allegation, but Sergeant Bennett denied observing Officer Berger use any type of force against § 87(2)(b). As per § 87(2)(b) there were no additional officers or civilians in the vicinity at the time the force allegedly occurred.

§ 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

- **Allegation F Discourtesy: Officer Scott Berger spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.**
- **Allegation G) Discourtesy: Sergeant Mervin Bennett spoke obscenely to § 87(2)(b) inside of the 41st Precinct stationhouse.**
- **Allegation H) Offensive Language: Sergeant Mervin Bennett made remarks to § 87(2)(b) based upon race inside of the 41st Precinct stationhouse.**
- **Allegation I) Abuse of Authority: Officer Scott Berger threatened § 87(2)(b) with the use of force inside of the 41st Precinct stationhouse.**

§ 87(2)(b) alleged that both Sergeant Bennett and Officer Berger called him a “motherfucker.” Additionally, § 87(2)(b) alleged that Sergeant Bennett called him a nigger and a prick. Lastly, § 87(2)(b) alleged that Officer Berger threatened him with the use of force. Both Officer Berger and Sergeant Bennett denied the aforementioned allegations.

§ 87(2)(b) explicitly stated that there were no additional officers or civilians in the vicinity at the time these allegations occurred. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

- **Allegation J) Abuse of Authority: Sergeant Mervin Bennett authorized the strip search of § 87(2)(b) inside of the 41st Precinct stationhouse.**

Sergeant Bennett authorized § 87(2)(b) s strip search because § 87(2)(b) violently resisted being placed into the police van and once inside of the van, § 87(2)(b) wiggled his torso and moved around in a manner that led Sergeant Bennett to suspect that he had contraband on his person that he was trying to discard inside of the van or reposition within his clothing or on his person. Sergeant Bennett also believed that § 87(2)(b) had been arrested for drugs the week before, which also added to his suspicion that he had drugs on his person.

[illegible]

- [illegible]

Investigator:	_____	_____	_____
	Signature	Print	Date
Supervisor:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date